

REMARKS

Introduction

- Claims 29-53 and 56 are pending in this application.
- Claims 29 and 51-53 are in independent form.
- Claims 54 and 55 have been canceled, without prejudice or disclaimer of subject matter.
- Claims 29, 39, 51-53, and 56 have been amended to define still more clearly what Applicants regard as their invention.

The rejections under 35 U.S.C. 103

- Claims 29-45 and 51-56 were rejected under 35 U.S.C. § 103(a) as being obvious from U.S. Patent No. 3,701,454 to Thorp in view of U.S. Patent No. 3,435,977 to Jacke.
- Claims 46-48 and 50 were rejected under 35 U.S.C. § 103(a) as being obvious from Thorp in view of Jacke and U.S. Patent No. 3,811,817 to Mansnerus.
- Claims 48 and 49 were rejected under 35 U.S.C. § 103(a) as being obvious from Thorp in view of Jacke in view of U.S. Patent No. 6,592,363 to Hoffmann.

First, cancellation of claims 54 and 55 renders the rejections of those claims moot.

Applicants submit that independent claims 29 and 51-53, together with the claims dependent therefrom, are patentably distinct from the cited references for at least the following reasons.

Claim 29 is directed to a fuel can with a can body containing a fuel filling and a cover lid which is formed by a sealing foil and which by sealing onto a flange like rim of the can body

is permanently connected to the can body. The cover lid is designed in such a manner that at least one opening in the cover lid is producable by a complete or partial severing or detaching of one or more lid portion elements along one or several material bonded predetermined breaking locations. The sealing foil of the cover lid comprises, apart from the sealing layer, at least two metal foils interconnected by a synthetic material layer located between same, and in particular, whereby the metal foils are aluminum foils, which are interconnected with each other by a polyethylene layer.

In the previous Response the Applicants argued the following, *inter alia*:

The present invention, claim 29 and the dependent claims, relates to a fuel can with a specifically adapted sealing foil. Neither Thorp nor Jacke (1) relate to a fuel can and/or (2) disclose sealing foils. A person having ordinary skill in the art therefore would not arrive at the present invention when considering or combining the above documents and would have no motivation to combine these documents.

...

Thorp discusses a container 10 having a cap 16. The content 32 of the container is not specified. It is suggested to use such container for beverages (column 1, line 25). Further, it is suggested that the consumer may "select more than one type or form of opening **for removing** the contents..." (col. 2, lines 58-60, emphasis added). Jacke also discusses a container with a specific dispensing opening (see abstract). Again, the document aims to provide a container for removing its content.

In summary, Thorp and Jacke do not disclose or suggest a fuel can nor a can closed with a sealing foil. Thus, even when combining those documents, the skilled person would not arrive at the present invention. Further, in the present invention, it is not aimed to remove or dispense the content from the fuel can; it is rather aimed to directly use the fuel can without removing/dispensing the content. It is submitted that the skilled person would have no motivation to consider containers with removable content when inventing the present fuel can. (Emphasis in the original.)

In the *Response to Arguments* section of the final Office Action, the Examiner states the following at paragraph 31:

31. Applicant argues that their invention is aimed to "directly use the fuel can without removing/dispensing the content." However, Applicant is arguing more than that which is claimed. The claims don't require the cover lid to be permanent or non-removable. (Emphasis added.)

Accordingly, in careful consideration of the Examiner's comments, Applicants have amended claim 29 herein to recite "[a] fuel can with a can body containing a fuel filling and a cover lid which is formed by a sealing foil and which by sealing onto a flange like rim of the can body is permanently connected to the can body..." See, e.g., page 2, lines 12-15 of the present specification, which states there can be a "welding or glueing of the cover lid to the can body."¹

Independent claims 51-53 have been similarly amended as well. Nothing in Thorp and Jacket, whether considered either separately or in any permissible combination (if any) would teach or suggest at least these features.

Accordingly, claims 29 and 51-53 are seen to be clearly allowable over the cited references.

¹It is of course to be understood that the references to various portions of the present application are by way of illustration and example only, and that the claims are not limited by the details shown in the portions referred to.

The dependent claims

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Applicants also have the following specific comments regarding claim 56.

Claim 56

Claim 56 recites a use of the fuel can as a thermal, heat, or light source, in particular as a burner for a stove or as a lamp.

In this regard Applicants note paragraph 23 of the Office Action, which states: "Regarding Claim 56, Thorp discloses a use fuel can as a thermal, heat or light source (Figure 1)."

However, Applicants cannot follow the Examiner's reasoning; Applicants do not understand where in Figure 1 of Thorp such features are shown. It is believed that Figure 1 of Thorp does not disclose such use. Furthermore, column 1, line 25 of Thorp discloses the use for storing beverages. It is respectfully submitted that the reasoning the Examiner provides in paragraph 23 of the Office Action is non-rational, and therefore that the Examiner has not made out a proper basis for an obviousness rejection under *KSR*. *KSR* states:

"... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."
MPEP 2141.III, quoting *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007). (Emphasis added.)

Thorp relates to a container closure such as for cans and bottles. See column 1, lines 8-9 and 25 of that patent; and column 4, lines 17-24 discusses a "straw in the case where the product is liquid, such as a beverage or semi-liquid, such as a frozen or semi-frozen consumable product"; and that the opening "may also be used where desired for pouring and drinking." Consequently, nothing in Thorp would teach or suggest a fuel can or using the fuel can as a stove or lamp.

For at least the foregoing reasons, claim 56 is seen to be clearly allowable over the cited references.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Respectfully Submitted

/Raymond A. DiPerna/
Raymond A. DiPerna
c/o Ladas & Parry LLP
26 West 61st Street
New York, New York 10023
Reg. No. 44,063
Tel. No. (212) 708-1950